

# Exhibit A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL BUSINESS )  
MACHINES CORPORATION, )  
 )  
Plaintiff, ) 20 Civ. 4573  
 )  
vs. )  
 )  
RODRIGO KEDE DE FREITAS LIMA, )  
 )  
Defendant. )  
-----)

\* CONFIDENTIAL \*

VIDEOTAPED DEPOSITION OF DIANE GHERSON

Via Videoconference

Ridgefield, Connecticut

Tuesday, July 7, 2020

Reported by:

KRISTIN KOCH, RPR, RMR, CRR

JOB NO. 181518

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July 7, 2020

10:44 a.m.

Videotaped Deposition of DIANE  
GHERSON, Via Videoconference, before  
Kristin Koch, a Registered Professional  
Reporter, Registered Merit Reporter,  
Certified Realtime Reporter and Notary  
Public of the State of New York.

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2 them and then it's their team. Beyond that we  
3 have accounts that we have dedicated -- people  
4 are dedicated to, but it wouldn't be solely  
5 dedicated to.

6 Q. Okay. And do you have an idea of  
7 how many PEP accounts there are? I understand  
8 there are 77 integrated accounts. How many --  
9 do you know how many PEP accounts there are?

10 A. I don't know.

11 Q. Okay. Do you know the level of  
12 contact that someone like Mr. Lima is expected  
13 to have with a PEP account?

14 MS. VELAZQUEZ: Objection to form.

15 A. Yes, we actually fill out reports on  
16 that on a regular basis. We get asked for  
17 updates on our relationships and contacts and  
18 so forth, but it's -- you know, it's -- for  
19 anyone like Rodrigo who is in constant contact  
20 with clients, it's an easy -- it's an easy ask,  
21 because, you know, they are constantly -- they  
22 are constantly working with them anyway.

23 Q. Okay. What was your understanding  
24 of Mr. Lima's performance as an employee of  
25 IBM, were you aware of any performance issues?

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2 MS. VELAZQUEZ: Objection to form.

3 You can answer.

4 A. Rodrigo was a very strong performer.

5 MR. McQUADE: I think it sounds like

6 Liza was breaking off there. We got --

7 it's on the record. We have an objection.

8 Okay.

9 MS. VELAZQUEZ: Okay, good. Thank

10 you.

11 A. Okay.

12 Q. I will rephrase the question. I

13 will rephrase the question for you.

14 Were you aware of any performance

15 problems with Mr. Lima?

16 MS. VELAZQUEZ: Objection to the

17 form.

18 You can answer.

19 A. Yeah, I don't -- I don't think of

20 about -- as the person having performance

21 problems. I think of them as having either

22 developmental issues that they need to overcome

23 or not being -- not having skills that are

24 aligned to a role, and for someone with his

25 high potential, that was definitely the way I

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2 A. I did. I sign all of them.

3 Q. You do sign all of them?

4 A. Yes.

5 Q. And are you familiar with the  
6 history of the IBM non-compete agreements  
7 before you assumed the role as chief human  
8 resources officer?

9 MS. VELAZQUEZ: Objection to form.

10 A. Somewhat. In my role in head of  
11 compensation benefits I was more involved in  
12 it. So and, of course, as a member of the  
13 leadership team, the HR leadership team, I was  
14 aware.

15 Q. When did -- when did IBM start -- do  
16 you know when IBM first started requiring  
17 employees to sign non-competition agreements?

18 A. No. That I don't know.

19 Q. Okay. Do you know which -- today  
20 which employees are required to sign the  
21 agreement, are all IBM employees required to  
22 sign a non-competition agreement?

23 MS. VELAZQUEZ: Objection to form.

24 A. No. The --

25 Q. Are there certain categories of

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2 employees that are required to sign it?

3 A. Yes.

4 MS. VELAZQUEZ: Objection to form.

5 A. There -- only our very senior  
6 executives are signing them, so this would be  
7 members of the acceleration team and anyone who  
8 is receiving performance share units in their  
9 equity, which would be a Band C level.

10 THE COURT REPORTER: I'm sorry.

11 Which would be --

12 THE WITNESS: A Band C level.

13 THE COURT REPORTER: Okay. And  
14 Ms. Gherson, could I just remind you to  
15 please pause for just a beat so that your  
16 attorney can object if she needs to. Thank  
17 you.

18 Q. So Band C level employees are  
19 required to sign non-competition agreements  
20 currently?

21 A. Yes, I believe so.

22 Q. And your Band A and Band B employees  
23 also are required to sign a non-competition  
24 agreement?

25 A. Yes.

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2 Q. Are there any employee categories  
3 above a category A?

4 A. Yes. There is the senior vice  
5 president. I should amend it. It's Band Cs  
6 who are members of the acceleration team who  
7 have to sign it. And there aren't that many of  
8 those, but they are Band C, so there are some  
9 Band Cs and then Band Bs, Band As, and then the  
10 senior vice presidents.

11 Q. Do you know how many total employees  
12 are required to sign it? Or another way to ask  
13 that question is how many Band C who are  
14 acceleration team employees are there at IBM?

15 MS. VELAZQUEZ: Objection to the  
16 form.

17 You can answer.

18 A. Well, there are 330 members of the  
19 acceleration team, so it's around that number.

20 Q. Okay. The acceleration team is 330.  
21 Do you know how many Band A, B and C employees  
22 there are in total?

23 A. Yes, Band A is around 70 to 80.

24 Q. Band B --

25 A. I don't know Band B.



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2 A. Only if they signed -- I know of a  
3 couple that have signed a different kind of  
4 non-compete by virtue of an acquisition.

5 Q. Okay. So and everyone signs the  
6 same standard form non-compete agreement; is  
7 that correct?

8 MS. VELAZQUEZ: Objection to the  
9 form.

10 You can answer.

11 A. As I indicated --

12 Q. In the -- I should clarify. All  
13 U.S.-based employees sign the same form  
14 non-compete agreement?

15 A. I -- I believe so.

16 Q. Are you aware of any executives who  
17 negotiated different language for their  
18 non-compete agreement?

19 A. I know of none.

20 Q. So I think you testified earlier  
21 that one of your roles was as a VP of talent.

22 A. Yes.

23 Q. Is that correct? And as VP of  
24 talent, what did that role entail, was that  
25 recruiting, was it retention?

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2 relying upon IBM Confidential Information to  
3 which you had access by virtue of your job  
4 duties or other responsibilities with IBM.

5 Do you see that?

6 A. Yes, I do.

7 Q. Okay. And paragraph 1(e)  
8 starting -- if you go to the fourth line of  
9 1(e), there is a clause that starts with "if  
10 performing the duties and responsibilities" and  
11 continues on. Is that the new language that  
12 you were referring to that was added to the  
13 non-competition agreement for U.S. Band A, B  
14 and C employees?

15 A. Yes, that's right.

16 MS. VELAZQUEZ: Objection to form.

17 A. I was particularly -- I was focused  
18 on "intentionally or unintentionally using,  
19 disclosing, or relying upon," that -- that  
20 piece, that's the part that I remember as being  
21 a narrower construction based on evolving case  
22 law.

23 Q. Okay. So in order to breach the  
24 non-competition agreement, an employee like  
25 Mr. Rodrigo has to accept a position with a

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2 company such as, for example, Microsoft where  
3 he would intentionally or unintentionally use,  
4 disclose or rely upon IBM confidential  
5 information to which he had access by virtue of  
6 his job duties or other responsibilities with  
7 IBM; is that right?

8 A. Yes.

9 MS. VELAZQUEZ: Objection to the  
10 form.

11 Q. Okay. Were there any other changes  
12 that were made to the agreement?

13 MS. VELAZQUEZ: Objection to form.

14 A. There may have been. I -- again, I  
15 was not in the job at that point, so I was not  
16 closely associated with the changes. I'm sure  
17 there -- there were others.

18 Q. Okay. Do you know why IBM presented  
19 Mr. Lima with a non-competition agreement in --  
20 well, he signed it in December of 2019?

21 MS. VELAZQUEZ: Objection to the  
22 form.

23 You can answer.

24 A. I could only speculate it was  
25 because he became a U.S. employee and,